



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2982



Phillip and Judith Mills
P.O. Box 620
Barrington, NH 03825

ADMINISTRATIVE ORDER
No. WD 02-16

April 5, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Phillip and Judith Mills, pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Phillip and Judith Mills are individuals having a mailing address of P.O. Box 620, Barrington, NH 03825.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
3. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

5. Pursuant to RSA 485-A:17, III and Env-Ws 415.04, timber harvesting permits are granted by completing the New Hampshire Department of Revenue Administration's Notice of Intent to Cut Wood or Timber form ("Intent to Cut").
6. RSA 227-J:7, the forest management statute, states that "[p]ursuant to RSA 485-A:17, any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create unnatural runoff may result in penalties under RSA 485-A."
7. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 square feet of contiguous area.
8. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
9. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
10. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
11. Phillip and Judith Mills are the owners of property located at 372 1st New Hampshire Turnpike, Northwood, NH more particularly identified on Town of Northwood Tax Map 230 as Lot 5 ("the Property").
12. On September 11, 2001, Phillip Mills signed an Intent to Cut for timber harvesting activities on the Property. The Intent to Cut, filed with the Town of Northwood, identified Reginald Sweet as the logger for the forestry operations to be performed on the Property.
13. Pursuant to Env-Ws 415.04, by executing the Intent to Cut form, Mr. Mills agreed and acknowledged that the forest management activities on the Property would be in accordance with the methods of controlling and dispersing water on truck roads, skid trails and log landings set forth in *Best Management Practices for Erosion Control on Timber Harvest Operations in New Hampshire*.
14. On March 5, 2002, DES received a complaint from personnel from the NH Department of Resources and Economic Development ("DRED"), Division of Forests and Lands stating that Mr. Mills had cleared and stumped in excess of 100,000 square feet of land on the Property, had not implemented erosion control measures on the Property, and had impacted wetlands and surface waters on the Property.
15. A review of DES records shows that neither a standard "Dredge and Fill" permit application nor an "Alteration of Terrain" (site specific) permit application had been submitted by the Mills' for the activities on the Property, described in Paragraph 14.
16. On March 11, 2002, DES personnel conducted a field inspection of the Property. During the inspection, DES personnel observed:

- a. Site disturbance in excess of 100,000 square feet without a site specific permit from DES
- b. The disturbed area was not stabilized;
- c. Erosion control measures were not installed on the Property;
- d. The hydrology of the site had been altered by the logging and construction activities on the Property;
- e. Sediment had entered wetlands adjacent to the disturbed area on the Property, and slopes adjacent to the wetland were unstable;
- f. Streams on the Property had been diverted;
- g. Slash from the logging operation had been left in streams and wetlands on the Property; and
- h. Appropriate stream crossings had not been constructed and, as a result, there was rutting in wetlands and through streams.

D. DETERMINATION OF VIOLATIONS

1. The Phillip and Judith Mills have violated RSA 485-A:17 by altering more than 100,000 square feet of terrain without a permit from DES.
2. The Mills have violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property.
3. The Mills have violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the Property.
4. The Mills have violated RSA 482-A:3, I by placing fill in wetlands and surface waters of the State, located on the Property without a permit from DES.
5. The Mills have violated RSA 482-A:3, I by filling and relocating seasonal streams on the Property without a permit from DES.
6. The Mills have violated RSA 485-A:17, Ws 415.04, Wt 304.05(b) and Wt 304.05(c) by not following the erosion control methods outlined in *Best Management Practices for Erosion Control on Timber Harvest Operations in New Hampshire* during logging operations on the Property.

E. ORDER

Based on the above findings, DES hereby orders Phillip and Judith Mills as follows:

1. Within 10 days of this Order, prepare a temporary stabilization plan ("Plan") for the Property, and submit said Plan to DES for approval. The Plan shall include a schedule for

implementing the measures described in the Plan.

2. Implement the approved Plan on the Property according to the schedule detailed in the Plan.
3. Within 60 days of the date of this Order, submit an application for a site specific permit to DES for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
4. Within 60 days of the date of this Order, submit an application for a wetlands permit for the Property.
5. Within 60 days of the date of this Order, submit a restoration plan for the restoration or mitigation of the wetland and surface waters to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and shall include:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration, and anticipated restoration compliance date.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on September 15, 2002, and September 15, 2003.
6. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item 5 above and to submit the restoration progress reports.
7. Implement the restoration plan proposed in accordance with Item 5 above only after receiving written approval and as conditioned by DES.
8. Submit the completed site specific and wetlands applications, restoration plan, including erosion and sediment control plans to:

Ana Ford
Site Specific Program
DES Water Division
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determinations D.1, D.2, and D.3 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Any person aggrieved by determination D.4 through D.7 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

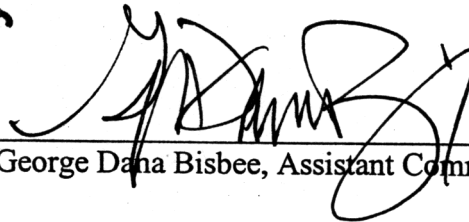
G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Mills remain obligated to comply with all applicable requirements. DES will continue to monitor the Mills' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



George Dana Bisbee, Assistant Commissioner

CERTIFIED MAIL # 7099 3400 0002 9774 8074

cc: Gretchen Rule, DES Legal Unit
Charles Knox, DES PIP Office
Rockingham County Registry of Deeds
Ana Ford, WQE/WD/DES
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Northwood Planning Board
Northwood Conservation Commission